IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION (LODGING) NO.898 OF 2005

M/s.Bay City Resorts Pvt. Ltd.
and others ... Petitioners

versus

The Greater Bombay Co-op. Bank
Ltd. and another ... Respondents

Shalish Shah with Prakash Ganwani i/by Zohair & Co. for petitioners.

K.J.Munshi i/by S. Satpute & Co. for respondent no.1.

CORAM : H.L.GOKHALE AND
S.C.DHARMADHIKARI, JJ.

DATE : 30th March 2005

PC :

1. Heard counsel for parties. Petitioners herein owe an amount exceeding Rs.6.00 crores to the first respondent bank. The first respondent bank has taken possession of the property by resorting to the provisions of Securitisation and Reconstruction of Financial Asset and Enforcement of Security Interest Act, 2002 (hereinafter referred to as "Securitisation Act"). Thereafter the first respondent bank has proceeded to auction the property by invoking the provisions

of Section 69 of the Transfer of Property Act. At that stage a Stay Application (Lodging) No.49 of 2005 is filed before the Debts Recovery Tribunal (DRT) and a declaration is sought that the measures taken by the first respondent bank are not in accordance with the provisions of Securitisation Act. The submission has been that having resorted to the Securitisation Act initially, the respondent bank which is a Mortgagee, cannot resort to Section 69 of the Transfer of Property Act. An interim application was moved and that has been rejected by the Presiding Officer of the DRT No.I. The learned Presiding Officer has also noted the efforts taken to settle the matter. As far as legal provisions are concerned, we do not find prima facie any error. Petitioners have filed an appeal to the Appellate Tribunal but inspite of that, they have chosen to file this petition in the mean while since the appeal has not been circulated forthwith. As stated above there is no error on the part of the respondents in resorting to Section 69 of Transfer of Property Act. Petition rejected.

(H.L.GOKHALE, J.)

(S.C.DHARMADHIKARI, J.)